

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Steven Schulte,

Complainant,

vs.

ORDER OF DISMISSAL

Steve Lampi, John Jordan, and Gordy  
Aune,

Respondents.

On November 3, 2006, Steven Schulte filed a Complaint with the Office of Administrative Hearings alleging that Steve Lampi, John Jordan and Gordy Aune violated Minn. Stat. §§ 211B.02, 211B.04 and 211B.06. The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on November 3, 2006, pursuant to Minn. Stat. § 211B.33. A copy of the Complaint and attachments were sent by United States mail to the Respondents on November 3, 2006.

After reviewing the Complaint and attached exhibits, the Administrative Law Judge has determined that the Complaint does not state prima facie violations of Minn. Stat. §§ 211B.02, 211B.04, or 211B.06. Therefore, Complaint is dismissed.

Based upon the Complaint and the supporting filings and for the reasons set out in the attached Memorandum,

**IT IS ORDERED:**

That the Complaint filed by Steven Schulte against Steve Lampi, John Jordan, and Gordy Aune is DISMISSED.

Dated: November 7, 2006

/s/ Beverly Jones Heydinger  
BEVERLY JONES HEYDINGER  
Administrative Law Judge

## **NOTICE**

Under Minn. Stat. § 211B.36, subd. 5, this order is the final decision in this matter and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

## **MEMORANDUM**

Respondent Steve Lampi is Mayor of Brooklyn Park and is seeking re-election to that position in the November 7, 2006, General Election. Respondent Gordy Aune is the Treasurer of Lampi's campaign committee. The Complaint fails to identify who Respondent John Jordan is and what his connection is to Respondent Lampi's campaign committee.

The Complaint alleges that various pieces of Respondents' campaign literature (flyers, website, lawn signs) violated Minn. Stat. §§ 211B.02, 211B.04 and 211B.06. The Administrative Law Judge will consider each allegation below.

### **Minn. Stat. § 211B.02 (False claim of support)**

Posted on the home page of Mayor Lampi's campaign website, is a statement of personal endorsement from former Brooklyn Park Police Chief Don Davis. Located directly below this personal endorsement in bold typeface is the phrase "Police Endorsed." Directly below the phrase "Police Endorsed" is the phrase "Endorsed by the Brooklyn Park Police Federation."<sup>[1]</sup> The Brooklyn Park Police Federation is the collective bargaining unit that represents some but not all of Brooklyn Park Police Department employees. In allegation 8, the Complainant claims that the statement "Police Endorsed," when used in conjunction with the former police chief's endorsement and the endorsement of the Police Federation, falsely implies that Mayor Lampi has the endorsement of the Brooklyn Park Police Department. Similarly, in allegation 4, the Complainant claims that stickers on Mayor Lampi's lawn signs that state "Police Endorsed" falsely imply endorsement of his candidacy by the Brooklyn Park Police Department in violation of Minn. Stat. § 211B.02.<sup>[2]</sup> According to the Complaint, the Brooklyn Park Police Department has not endorsed Mayor Lampi.

Minn. Stat. § 211B.02 provides as follows:

A person or candidate may not knowingly make, directly or indirectly, a false claim stating or implying that a candidate or ballot question has the support or endorsement of a major political party or party unit or of an organization. A person or candidate may not state in written campaign material that the candidate or ballot question has the support or endorsement of an individual without first getting written permission from the individual to do so.

The statute prohibits a candidate from knowingly making a false claim stating or implying that he or she has the endorsement or support of an

organization. The question presented is whether the phrase “police endorsed” implies that the Brooklyn Park Police Department endorses Respondent’s candidacy. Minn. Stat. § 211B.02 is a criminal statute, violation of which is a misdemeanor.<sup>[3]</sup> Therefore, the rule of strict construction of penal statutes must be applied notwithstanding the civil nature of the proceedings before the Administrative Law Judge.<sup>[4]</sup>

Mayor Lampi has the endorsement of the Brooklyn Park Police Federation and former Brooklyn Park Police Chief Don Davis. Because he has the endorsement of some police officers, the phrase “police endorsed” is a true statement. Even when placed in close proximity to the former Police Chief’s personal endorsement, the phrase “police endorsed,” does not falsely imply that Mayor Lampi has the endorsement of the Brooklyn Park Police Department. The Complainant has failed to allege a prima facie violation of Minn. Stat. § 211B.02, and these allegations are dismissed.

#### **Minn. Stat. § 211B.04 (disclaimer)**

The Complainant claims in allegations 1, 2, 3, 5 and 7 that several pieces of Respondents’ campaign material lacked disclaimers as required by Minn. Stat. § 211B.04. The Minnesota Court of Appeals recently ruled, however, that the disclaimer requirement contained in Minn. Stat. § 211B.04 is unconstitutional on its face.<sup>[5]</sup> The Court held that the Section 211B.04’s disclaimer requirement violates the First Amendment of the U.S. Constitution by directly regulating the content of pure speech and that there is no way to narrowly construe the statute to avoid the constitutional violation. Accordingly, the Complainant’s allegations regarding Respondents violations of Minn. Stat. § 211B.04 are dismissed.<sup>[6]</sup>

#### **Minn. Stat. § 211B.06 (false campaign material)**

The Complaint alleges that Respondents prepared and disseminated false campaign material in violation of Minn. Stat. § 211B.06. Section 211B.06 prohibits a person from intentionally preparing or disseminating false campaign material with respect to the personal or political character or acts of a candidate that is designed or tends to injure or defeat a candidate, and which the person knows is false or communicates to others with reckless disregard of whether it is false. In *Kennedy v. Voss*,<sup>[7]</sup> the Minnesota Supreme Court observed that the statute is directed against the evil of making false statements of fact and not against unfavorable deductions, or inferences based on fact - even if the inferences are “extreme and illogical.”<sup>[8]</sup> The Court pointed out that the public is protected from such extreme and illogical inferences by the ability of other speakers to rebut these claims during the campaign process.<sup>[9]</sup> In addition, expressions of opinion, rhetoric, and figurative language are generally protected speech if, in context, the reader would understand that the statement is not a representation of fact.<sup>[10]</sup>

The burden of proving the falsity of a factual statement cannot be met by showing only that the statement is not literally true in every detail. If the statement is true in substance, inaccuracies of expression or detail are

immaterial.<sup>[11]</sup> A statement is substantially accurate if its “gist” or “sting” is true, that is, if it produces the same effect on the mind of the recipient which the precise truth would have produced. Where there is no dispute as to the underlying facts, the question whether a statement is substantially accurate is one of law.<sup>[12]</sup>

Campaign material is “any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election.”<sup>[13]</sup> The Respondents disseminated a campaign postcard urging voters to re-elect Respondent Lampi for Mayor.<sup>[14]</sup> The backside of the postcard is divided into three columns. One column has the heading “Experience” and lists bullet points describing Mayor Lampi’s experience. The middle column has the heading “The Last 4 Years” and lists achievements of the last four years. The third column has the heading “The Next 4 Years” and lists Mayor Lampi’s goals for the next four years. Respondent Lampi also has an “Issues” page on his campaign website that lists many of the same achievements that are listed on the postcard.<sup>[15]</sup> Both Respondents’ campaign postcard and the campaign website are campaign material within the meaning of Minn. Stat. § 211B.01, subd. 2.

The Complainant alleges that two statements listed on the “Issues” page of Lampi’s website and on the back side of the postcard are false. On the “Issues” page of the website,<sup>[16]</sup> the statements are listed under the heading: “The Past Four Years.” On the campaign postcard,<sup>[17]</sup> the statements are listed under the heading “The Last 4 Years.” The statements the Complainant alleges to be false are: (1) “Reduced the general levy tax rate the last four years” and (2) “Target Corporate Campus, the largest development ever in Brooklyn Park!”

The Complainant maintains that the first sentence, “Reduced the general levy tax rate the last four years,” is false because Mayor Lampi has only voted on general levy tax rates for the past three years (budget years 2004, 2005 and 2006). The Complainant argues that Mayor Lampi is falsely taking credit for the 2003 general levy tax rate when that rate was set and certified prior to Lampi having been sworn into office in January of 2003. The Complainant concedes that Mayor Lampi did participate in amending the 2003 General Fund budget, but argues that this action lowered spending out of the 2003 general fund and did not affect the certified tax levy amount for that year.<sup>[18]</sup> The Complainant contends that because Mayor Lampi did not vote on the general levy tax rate for 2003, it is false for him to claim that he “reduced the general levy tax rate the last four years.” The Complainant also alleges that the Respondents knew this statement was false or communicated it with reckless disregard of whether it was false.

The Administrative Law Judge concludes that the Complainant has failed to state a prima facie violation of Minn. Stat. § 211B.06 with respect to this statement. Complainant’s Exhibit H shows that Brooklyn Park’s general fund tax rate has decreased from 47.88% in 2002 to 37.74% in 2006.<sup>[19]</sup> The proposed tax rate for 2007 is 35.72%. Based on these numbers, the statement, “Reduced the general levy tax rate the last four years,” is not a false statement of fact. Although the Complainant alleges that Respondent Lampi is falsely taking credit

for the 2003 general levy tax rate, the statement itself does not identify which four years are being referred to by the Respondent. Even if the Respondent cannot take credit for setting the 2003 tax rate, he can take credit as mayor for his role in setting the 2004-2007 tax rates. With respect to these four years the statement is true; the general levy tax rate was reduced. Moreover, at most the Complainant alleges a false implication – that the Respondent is falsely implying he was responsible for the 2003 tax rate. Minn. Stat. § 211B.06 is directed against false statement of facts and not false implications. For both of these reasons, Complainant's allegations 6.1 and 9 regarding the reduction in taxes statements are dismissed.

The Complainant maintains that the second identified sentence, "Target Corporate Campus, the largest development ever in Brooklyn Park!," is false because the Target Campus is not the largest development ever in Brooklyn Park. According to the Complainant, numerous other developments within Brooklyn Park exceed the development size of the current Target Facility and Target expansion under construction. The Complainant contends that the Target Campus is not the largest development in Brooklyn Park on either a square foot or acreage basis. According to the Complainant, the existing Crosstown North development exceeds the Target Campus in total square feet, and the Edinburgh Housing development is larger in total acreage. In addition, the Complainant maintains that much of the existing Target Corporate Campus was approved and constructed prior to Mayor Lampi taking office in January 2003. The Complainant argues that the statement intentionally misleads readers into thinking that the entire corporate campus was developed over the last four years during Mayor Lampi's tenure.

The Administrative Law Judge concludes that the Complainant has failed to state a prima facie violation of Minn. Stat. § 211B.06 with respect to this allegation. The statement: "Target Corporate Campus, the largest development ever in Brooklyn Park!" is an expression of opinion and hyperbole and is insufficient to form the basis of a section 211B.06 complaint. The gist of the statement, that the Target Corporate Campus is a large development, is substantially accurate. Moreover, "large" in the context of a development project could refer to a number of factors besides physical size or total acreage. In addition, Minn. Stat. § 211B.06 is directed against false statements of fact and not misleading statements. The fact that the Respondents may be *implying* that the entire corporate campus was developed during Mayor Lampi's tenure is not enough to state a claim under section 211B.06. Finally, the statement standing alone, is not material with respect to the personal or political character or acts of Mayor Lampi. Rather, it is a general assertion about development in Brooklyn Park. For all of these reasons, this statement does not violate Minn. Stat. § 211B.06 and Complainant's allegations 6.2 and 10 are dismissed.

Because the Complaint has failed to allege prima facie violations of Minn. Stat. §§ 211B.02, 211B.04, and 211B.6 on the part of the Respondents, it is dismissed in its entirety.

B.J.H.

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<sup>[1]</sup> Complaint Ex. E.

<sup>[2]</sup> Complaint Ex. C.

<sup>[3]</sup> Minn. Stat. § 211B.19 provides that a violation of chapter 211B for which no other penalty is provided is a misdemeanor.

<sup>[4]</sup> *In the Matter of the Contest of General Election [Graves v. Meland]*, 264 N.W.2d 401, 403 (Minn. 1978).

<sup>[5]</sup> *Riley v. Jankowski*, No. A05-1125 (Minn. App. April 26, 2006), *rev. denied*, (Minn. July 20, 2006).

<sup>[6]</sup> Allegations 3, 5, and 7 of Complaint.

<sup>[7]</sup> 304 N.W.2d 299 (Minn. 1981).

<sup>[8]</sup> *Id.* at 300.

<sup>[9]</sup> *Id.*

<sup>[10]</sup> *Jadwin v. Minneapolis Star and Tribune Co.*, 390 N.W.2d 437, 441 (Minn. App. 1986), *citing* *Old Dominion Branch No. 496, National Assoc. of Letter Carriers v. Austin*, 418 U.S. 264, 284-86 (1974); *Greenbelt Coop. Publishing Assoc. v. Bresler*, 398 U.S. 6, 13-14 (1970). *See also* *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 16-17 (1990); *Diesen v. Hessburg*, 455 N.W.2d 446, 451 (Minn. 1990); *Hunter v. Hartman*, 545 N.W.2d 699, 706 (Minn. App. 1996);

<sup>[11]</sup> *Jadwin v. Minneapolis Star and Tribune Co.*, 390 N.W.2d at 441.

<sup>[12]</sup> *Jadwin v. Minneapolis Star and Tribune Co.*, 390 N.W.2d at 441.

<sup>[13]</sup> Minn. Stat. § 211B.01, subd. 2.

<sup>[14]</sup> Complaint Ex. A.

<sup>[15]</sup> Complaint Ex. I.

<sup>[16]</sup> Complaint Ex. I.

<sup>[17]</sup> Complaint Ex. A.

<sup>[18]</sup> Complaint Exs. F, G and H.

<sup>[19]</sup> The general fund tax rate increased slightly in 2006 over the 2005 rate of 36.86%. However, according to Ex. H, the EDA levy was added to the general fund in 2006. Without this addition, the 2006 tax rate would have been 36.33%.